

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

MARVEL CHARACTERS, INC.,

Plaintiff,

v.

NANCI SOLO and ERIK COLAN,

Defendants.

Case No.: 1:21-cv-05316-NM-TAM

Hon. Nina Morrison

LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT BY PLAINTIFF AND COUNTERCLAIM-DEFENDANT MARVEL CHARACTERS, INC.

NANCI SOLO and ERIK COLAN,

Counterclaimants,

v.

MARVEL CHARACTERS, INC. and DOES 1-10, inclusive,

Counterclaim-Defendants.

Pursuant to Rule 56.1 of the Local Rules of the United States District Court for the Eastern District of New York (the “Local Rules”), Plaintiff Marvel Characters, Inc. (“MCI”), by and through its undersigned counsel, respectfully submits the following statement of material facts as to which there is no genuine issue to be tried in support of its motion for summary judgment.

1. Gene Colan died in 2011. *See* December 2, 2022 Declaration of Molly M. Lens (“Lens Decl.”) Ex. 3 at 3 (Nanci Solo attesting that Colan died on June 23, 2011); Ex. 6 at 4-5 (Solo’s admission that Colan died on or about June 23, 2011); Ex. 7 at 5 (Erik Colan’s identical admission); Ex. 8 at 13, 18, 24 (Nanci Solo and Erik Colan’s termination notices stating that “Eugene J. Colan died on June 23, 2011”); Ex. 9 at 27, 32, 38, 42 (same); Ex. 10 at 9 (same).

2. At the time of his death, Gene Colan was a domiciliary of the State of New York. *See* Lens Decl. Ex. 3 at 3 (Nanci Solo attesting that Colan was domiciled in Brooklyn, New York at the time of his death); Ex. 6 at 5 (Solo's admission that Colan was a New York domiciliary at his time of death); Ex. 7 at 5 (Erik Colan's identical admission).

3. Gene Colan had at least four children—Jill Kubicki, Valerie Waldman, Nanci Solo, and Erik Colan. *See* Lens Decl. Ex. 11 at 5, 12, 17, 21 (“alternate” termination notices stating that “[Gene Colan] is survived by his children, Nanci Solo and Erik Colan, biological grandchild, Rachel Waldman (the daughter of his deceased biological child, Valerie Waldman) and biological child, Jill Kubicki”); Ex. 3 at 4-5 (Solo attesting that Colan left behind four children “who would inherit his[] estate”: son Erik Colan and daughters Nanci Solo, Valerie Waldman, and Jill Kubicki); *id.* at 11-12 (Jill and Valerie’s notarized waivers as “child[ren]” of Gene Colan); Ex. 6 at 5 (Nanci Solo’s admission that she and her brother Erik Colan were both biological children of Gene Colan); Ex. 7 at 5-6 (Erik Colan’s mirror-image admission); Ex. 2 at 78:9-13 (Solo testifying that her father told her “there were two girls with his first wife”); *id.* at 79:16-80:4 (Solo testifying that she met her “half siblings” “a couple of times” and confirming their names as “Jill Kubicki and Valerie Waldman”); *id.* at 98:6-13 (Solo testifying that the beneficiaries in her father’s later-invalidated will included “[her] mother . . . , [her]self and [her] brother [Erik Colan] and then Valerie, her two children, . . . Jill[,] and [her] three children”).

4. Valerie Waldman is deceased but is survived by her daughter Rachel Waldman. *See* Lens Decl. Ex. 11 at 5, 12, 17, 21 (“alternate” termination notices describing Rachel as “the daughter of [Gene Colan’s] deceased biological child, Valerie Waldman”); Ex. 6 at 5-6 (Solo’s admission that Rachel Waldman is alive); Ex. 7 at 6 (Erik Colan’s identical admission).

5. Jill Kubicki and Valerie Waldman's mother is Sallee Greenberg, who was Gene Colan's first wife. *See* Lens Decl. Ex. 12 (corrections to New York Times obituary of Gene Colan, clarifying that it had "misstated the name of the woman to whom he was previously married. She was Sallee Greenberg The obituary also omitted two surviving children from Mr. Colan's marriage to Ms. Greenberg, Valerie Waldman and Jill Kubicki"); Ex. 2 at 78:9-13 (Solo testifying that her father told her "there were two girls with his first wife"); *id.* at 79:16-80:4 (Solo testifying that she met her "half siblings" "a couple of times" and confirming their names as "Jill Kubicki and Valerie Waldman"); *id.* at 80:20-81:16 (Solo testifying that she understood from her father that "Sall[ee] remarried a man named Norman Bru[st] and that after that remarriage, [Gene] consented to have Norman adopt the children" and therefore he "was not able to see" Jill and Valerie); Ex. 1 at 4 (letter from Defendants' counsel identifying the "two children, Valerie (now deceased) and Jill, Gene Colan had with his first wife, Salle [sic]."); Ex. 2 at 159:4-160:9 (Solo testifying that Defendants' counsel's representations to the court vis-à-vis Jill Kubicki and Valerie Waldman were based on "what [Solo] actually know[s]" and were not inaccurate); Ex. 4 at 4 (excerpt from *Secrets in the Shadows*, produced by Nanci Solo and Erik Colan, stating that "Gene and Sallee indeed did marry . . . and before long they were the parents of two young girls, Valerie and Jill, born in 1954 and 1957 respectively"); *see also* Ex. 5 at 15:2-23 (Gene Colan praising *Secrets in the Shadows* as detailing "everything" about his life story).

6. After Gene and Sallee divorced, Sallee married Norman Brust. *See* Lens Decl. Ex. 2 at 80:5-81:16 (Solo testifying that "Sall[ee] remarried a man named Norman Bru[st]"); Ex. 1 at 4 (letter from Defendants' counsel stating that "[a]fter the couple's divorce decades ago, Salle [sic] remarried Norman Brust"); Ex. 2 at 159:4-160:9 (Solo testifying that Defendants'

counsel's representations to the court vis-à-vis Sallee and Norman were based on "what [she] actually know[s]" and were not inaccurate).

7. While married to Sallee, Norman Brust, with Gene Colan's consent, adopted Jill and Valerie. *See* Lens Decl. Ex. 2 at 80:20-81:16 (Solo testifying that "Sall[ee] remarried a man named Norman Bru[st] and that after that remarriage, [Gene] consented to have Norman adopt the children"); Ex. 1 at 4 (letter from Defendants' counsel stating that "[a]fter the couple's divorce decades ago, Salle [sic] remarried Norman Brust, who legally adopted Valerie and Jill in New York."); Ex. 2 at 159:4-160:9 (Solo testifying that Defendants' counsel's representations to the court vis-à-vis Jill Kubicki and Valerie Waldman were based on "what [she] actually know[s]" and were not inaccurate).

8. The purported termination notices at issue in MCI's September 24, 2021 complaint, Defendants' December 15, 2021 counterclaim, and MCI's April 1, 2022 supplemental complaint (collectively, the "Notices") attempt to terminate the purported grants to certain illustrated comic book stories on which Gene Colan allegedly worked. *See* Lens Decl. Exs. 8-10 (as-filed pleadings with termination notices attached thereto).

9. The Notices were served on behalf of only Nanci Solo and Erik Colan; neither Rachel Waldman nor Jill Kubicki joined in these Notices. *See* Lens Decl. Exs. 8-10 (as-filed pleadings with termination notices attached thereto).

Dated: December 2, 2022

O'MELVENY & MYERS LLP

By: /s/ Daniel M. Petrocelli
Daniel M. Petrocelli

Daniel M. Petrocelli*
dpetrocelli@omm.com
Molly M. Lens
mlens@omm.com
Matthew Kaiser*
mkaiser@omm.com
1999 Avenue of the Stars, 8th Floor
Los Angeles, California 90067
Telephone: (310) 553-6700
Facsimile: (310) 246-6779

Allen Burton
aburton@omm.com
Times Square Tower
7 Times Square
New York, NY 10036
Telephone: (212) 326-2000
Facsimile: (212) 326-2061

* Admitted pro hac vice

Attorneys for Marvel Characters, Inc.